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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

November 8, 2004

In re application of : DONDI, Beda Charles
Serial No. : 10/065,539
Filed : October 29, 2002
For : **MUFFLER FOR SUCTION SYSTEM
EXHAUST AIR USED WITH AN
AUTOMATIC CUTTING MACHINE**
Examiner : SAN MARTIN, Edgardo
Art Unit : 2837
Our File No. : 10583.3801

AMENDMENT AFTER FINAL UNDER RULE 1.116

Mail Stop AF
Hon. Commissioner of Patents and Trademarks
Alexandria, VA 22313-1450

Dear Sir:

In response to the Examiner's Final Office Action of May 20, 2004, this amendment is submitted to place the case in condition for allowance on its face. Reconsideration is respectfully requested. Applicant files herewith the three month extension of time with the appropriate fee extending the time to respond to November 20, 2004.

Please amend the application as follows:

Claims 1, 2, 3, 5, 6 and 7 are pending in the application.

The amendment to the claims is on pages 2 through 4.

The remarks are on pages 5 through 7.

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Please amend the claims as follows:

Cancel claims 1, 2, 3, 5, 6 and 7 without prejudice.

Add new claim 8.

1. (Cancelled)
2. (Cancelled)
3. (Cancelled)
4. (Cancelled)
5. (Cancelled)
6. (Cancelled)
7. (Cancelled)
8. (New) A noise reduction system for use with a vacuum generating device that includes an air turbine to reduce the noise generated by the exhaust air from the air turbine when used with an automatic cutting table comprising:
 - an automatic cutting table;
 - an air turbine for generating a vacuum for said automatic cutting table, said air turbine having noisy exhaust air and an exhaust air outlet;
 - a first turbine exhaust air noise reduction member having a cylindrical main housing including a turbine exhaust air inlet conduit and an exhaust air outlet conduit;
 - a cylindrical baffle mounted coaxially inside said cylindrical main housing;

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an exhaust air barrier mounted fully across the inside of said cylindrical baffle, near the longitudinal center of said cylindrical baffle, said cylindrical baffle having a first cylindrical body section having a plurality of apertures and a second cylindrical body section having a plurality of apertures, said first cylindrical body section separated from said second cylindrical body section by said exhaust air barrier;

said cylindrical baffle first body section in direct fluid communication with said main housing turbine exhaust air inlet conduit;

said cylindrical baffle second body section in fluid communication with said exhaust air outlet conduit from said cylindrical main housing;

said cylindrical main housing having an inside curved wall;

a solid composite noise reduction foam surrounding the inside curved wall of said cylindrical main housing and surrounding said coaxially mounted baffle;

a second cylindrical housing having a diameter larger than said first main cylindrical housing and a curved inside wall surface;

said second cylindrical housing having a cylindrical body and a closed end and an open end;

a solid composite noise reduction foam attached to and surrounding the inside wall surface and the closed inside end of said second cylindrical housing;

said cylindrical main housing outlet exhaust conduit mounted coaxially inside said second cylindrical housing and in fluid communication with the inside of said second cylindrical housing and said noise reduction foam in said second cylindrical housing; and

said second cylindrical housing open end surrounding said main cylindrical housing outlet exhaust air conduit allowing exhaust air exiting the main cylindrical outlet exhaust

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conduit to contact the composite noise reduction foam in said second cylindrical housing and to reverse direction and exit the second cylindrical housing open end thereby providing noise reduction for the air turbine exhaust air.

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REMARKS

The Examiner's rejection of claims 3 and 5 under 35 U.S.C. 102(b) as being anticipated by Raudman, Jr. (U.S. 3,757,892) is respectfully traversed. For anticipation under 35 U.S.C. 102, the reference must teach each and every element of the claimed invention arranged as in the claim Lindermann Maschinenfabrik GmbH v. American Hoist & Derrick Co., 221 U.S.P.Q. 481 (Fed. Cir. 1984). Applicant has cancelled claims 3 and 5 and, essentially, rewritten the subject matter of claims 3 and 5 into new claim 8. The Raudman patent discloses an exhaust unit for a combustion engine that removes sparks from the exhaust air to prevent fires. The structure of the device shown in Raudman is quite different than applicant's specifically claimed invention in new claim 8. In applicant's invention, there is an exhaust air barrier lodged centrally between the first baffle and the second baffle, all of which is coaxially mounted in a cylindrical housing that is lined with a solid composite noise reduction foam. The Raudman device shows a different baffle structure that includes a small partial obstruction disk 65 (shown in Figure 2 of Raudman) that partially covers part of the baffle. Just about every element in Raudman is different than the elements in applicant's claimed invention including the first and second baffle sections, the air exhaust barrier, the foam liner and the second cylindrical housing used in applicant's claimed invention. In summary, new claim 8 is believed to be on its face allowable over the Raudman reference.

The Examiner's rejection of claims 1, 6 and 7 under 35 U.S.C. 103(a) as being unpatentable over McLeod (U.S. 2,675,088) in view of Inoue, et al. (U.S. 4,880,078) is respectfully traversed. Claims 1, 6 and 7 have been cancelled and the claim limitations have been included in new claim 8. Applicant believes that the Examiner has failed to establish a prima facie determination of obviousness under 35 U.S.C. 103. The Examiner bears the initial burden of presenting a prima facie case of obviousness. In re Oetiker, 24 U.S.P.Q.2d 1443, 1444

(Fed. Cir. 1992). A prima facie case of obviousness is established when the teachings of the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. In re Bell, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993) (quoting In re Rinchart, 189 U.S.P.Q. 143, 147 (C.C.P.A. 1976). In re Rijckaert, 28 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992). It is applicant's position that even if combined, McLeod and Inoue, et al. together would not produce applicant's specifically claimed invention. Also, there is no teaching in either reference to arrive at applicant's claimed invention. The muffler shown in Figure 1 of McLeod is different than applicant's claimed noise reduction system in new claim 8. New claim 8 requires an air barrier specifically mounted between first and second portions of the baffle that contain a plurality of apertures. In McLeod, the barrier is in a separate housing that also has air passages 20 that allow the air in the first baffle portion to be admitted into the main housing. McLeod does not have any composite noise reduction material lining the inside surface as clearly required by applicant's noise reduction system in claim 8. The Inoue, et al. reference does not teach a second main cylindrical housing that encompasses the exhaust of the first main housing and the exhaust conduit that reverses the direction of the exhaust air while the exhaust air strikes a second chamber with noise reduction foam surrounding it. Thus, it is applicant's position that even if one did combine McLeod with Inoue, et al., applicant's specifically claimed invention in claim 8 would not result. The rejection should be withdrawn.

The Examiner's rejection of claim 2 under 35 U.S.C. 103(a) as being unpatentable over Flugger (U.S. 4,550,799) in view of Inoue, et al. (U.S. 4,880,780) and further in view of Steger, et al. (U.S. 5,765,257) is respectfully traversed. Applicant reiterates applicant's comments above regarding the Inoue, et al. reference and the failure to establish a prima facie case of obviousness. The Examiner cites Inoue, et al. as a teaching that one can utilize a compound muffler system by adding sections together. Inoue, et al. shows a group of noise reduction

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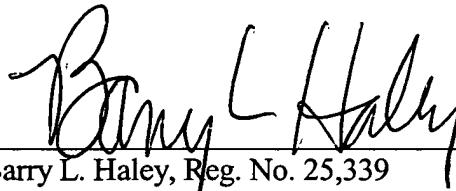
systems that are very similar to each other in series. There is no teaching in Inoue, et al. to provide the combination of specific elements provided in applicant's new claim 8 that include a main cylindrical housing and a second cylindrical housing specifically mounted relative to each other and working in combination. The Flugger reference shows a combustion engine muffler having two inside baffles coaxially and then a main housing that has fiberglass for noise reduction. Applicant's claim 8 recites a structure that has a single main housing, a solid composite noise reduction material lining the inside, and a single baffle. The gases flow between a retainer member 26 that includes additional apertures and tubular member 28. Steger, et al. shows a muffler for vacuum cleaners that has an inlet conduit and a larger cylindrical housing with an outlet that reverses the flow of the air 180 degrees. The inlet conduit 23 inner opening does not have any apertures that is required in applicant's invention in claim 8 which are located in the second portion body of the inner baffle in applicant's claimed invention. When considering the references together, there is no suggestion of applicant's claimed invention which is a very compact noise reduction system for use with a air turbine in an automatic cutting table that takes up very little space. It is applicant's position that the Inoue, et al. reference would not suggest nor does it teach combining Steger, et al. with Flugger. However, even if those two references were joined together, applicant's specifically claimed invention in claim 8 would not result.

In summary, it is applicant's position that new claim 8 is allowable over the references of record on its face.

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If there are any additional charges, including Extensions of time, please bill our Deposit
Account No. 13-1130.

Respectfully submitted,

A handwritten signature in black ink, reading "Barry L. Haley". The signature is written in a cursive style with a horizontal line underneath it.

Barry L. Haley, Reg. No. 25,339
Malin, Haley & DiMaggio, P.A.
1936 S. Andrews Avenue
Fort Lauderdale, Florida 33316
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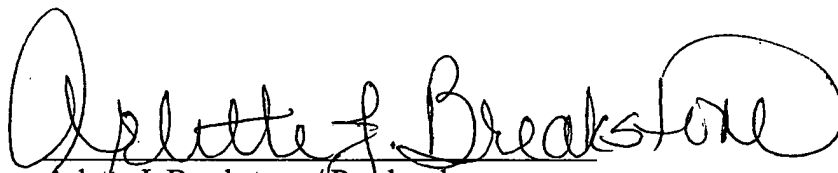
Our File No.: 10583.3801

CERTIFICATE OF EXPRESS MAIL

I HEREBY CERTIFY that the following correspondence; Request for a Three Month Extension of Time; a Check in the Amount of \$490.00 for the required fee; Amendment Transmittal Letter (in Duplicate); Amendment After Final Under Rule 1.116; and a Return Postcard for confirmation of receipt, is being deposited with the United States Postal Service as Express Mail No. EV 465821831 US, addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia, 22313-1450 on this day of, 2003.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Any additional charges, including extension of time, please bill our Account No. 13-1130.


Arlette J. Breakstone / Paralegal

Date: November 8, 2004

Customer No. 22235
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In re Application of
Serial No.
Filed
For



DONDI, Beda Charles
10/065,539
October 29, 2002

**MUFFLER FOR SUCTION SYSTEM EXHAUST AIR USED WITH AN
AUTOMATIC CUTTING MACHINE**

Mail Stop AF
COMMISSIONER FOR PATENTS
Alexandria, VA 22313-1450

AMENDMENT TRANSMITTAL LETTER

Sir:

- ☒ Transmitted herewith is an amendment in the above-identified application.
- ☒ Small entity status of this application under 37 CFR 1.9 and 1.27 has been established by a statement previously submitted.
- ☐ No additional fee is required.

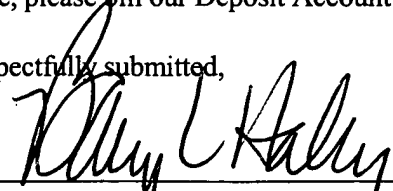
The fee has been calculated as shown below:

(Col. 1)			(Col. 2)		(Col. 3)	SMALL ENTITY		OTHER THAN A SMALL ENTITY		
	CLAIMS REMAINING AFTER AMENDMENT		HIGHEST NO. PAID FOR	PRESENT EXTRA		RATE	ADDIT. FEE	OR	RATE	ADDIT. FEE
TOTAL	* 1	MINUS	** 20	= 0		x\$ 9	\$ 0.00		x\$18	\$
INDEP	* 1	MINUS	*** 3	= 0		x\$42	\$ 0.00		x\$84	\$
<div></div> FIRST PRESENTATION OF MULTIPLE DEP. CLAIM						x\$140	\$ 0.00		X\$280	\$
						TOTAL ADDIT. FEE	\$0.00	OR		\$

- ☐ Please charge our Deposit Account No. 13-1130 in the amount of \$. A duplicate copy of this sheet is attached.
- ☒ A Request for a Three Month Extension of Time together with a check in the amount of \$490.00 for the fee is attached.
- ☒ The Commissioner is hereby authorized to charge payment of the following fees associated with this communication or credit any overpayment to Deposit Account No. 13-1130. A duplicate copy of this sheet is attached.
- ☒ Any filing fees under 37 CFR 1.16 for the presentation of extra claims.
- ☐ Any patent application processing fees under 37 CFR 1.17.
- ☒ If there are any additional charges, including extensions of time, please bill our Deposit Account No. 13-1130.

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Respectfully submitted,


Barry L. Haley, Reg. No. 25,339

CLIENT NO. 22235

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